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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 ARLY “DENVER” BOSH, EMEL  
9 BOSH, and their minor child,

10 Plaintiffs,

11 v.

12 UNITED STATES OF AMERICA,

13 Defendant.

CASE NO. C19-5616 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkt. 14, and Plaintiffs Arly and Emel Bosh’s (“Bosh’s”) objections to the R&R, Dkt. 15.

16 On September 12, 2019, Judge Fricke issued the R&R recommending that the Court dismiss the Bosh’s’ complaint because it is barred by the doctrine of *Feres v. United States*, 340 U.S. 135, 146 (1950), which determined that “the Government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service.” On September 19, 2019, the Bosh’s filed objections. Dkt. 15. On October 1, 2019, the Government responded. Dkt. 16.

1 The district judge must determine de novo any part of the magistrate judge's  
2 disposition that has been properly objected to. The district judge may accept, reject, or  
3 modify the recommended disposition; receive further evidence; or return the matter to the  
4 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

5 In this case, the Bosh's objections are without legal merit. It is true that many  
6 people, including Supreme Court justices, have questioned the *Feres* decision. *See, e.g.,*  
7 *United States v. Johnson*, 481 U.S. 681, 700 (Scalia, J., dissenting) ("*Feres* was wrongly  
8 decided and heartily deserves the widespread, almost universal criticism it has received.")  
9 *Feres*, however, is the law of the land, and the Court declines any invitation to depart  
10 from binding precedent. Therefore, the Court having considered the R&R, the Bosh's  
11 objections, and the remaining record, does hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED**;
- 13 (2) The Government's motion to dismiss, Dkt. 5, is **GRANTED**;
- 14 (3) The Bosh's claims are **DISMISSED with prejudice**; and
- 15 (4) The Clerk shall terminate all pending motions, enter a JUDGMENT in  
16 favor of the Government, and close the case.

17 Dated this 11th day of December, 2019.

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20 BENJAMIN H. SETTLE  
21 United States District Judge  
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